IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 35581 of 2007(J)

PETITIONER:

JOKKUTTY JOSE, AGED 38 YEARS,
S/O.JOSE (LATE NEELETTU VEEDU, MUTTAMBALAM P.O
KOTTAYAM DISTRICT.

BY ADV. SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENTS:

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1. THE DISTRICT MAGISTRATE/DISTRICT COLLECTOR, KOTTAYAM DISTRICT.

2. THE SUB INSPECTOR OF POLICE, ETTUMANOOR, KOTTAYAM DISTRICT.

3. THE ASST.EXCISE COMMISSIONER, KOTTAYAM.

4. THE EXCISE COMMISSIONER, THIRUVANANTHAPURAM.

5. K.M.PRABHAKARAN NAIR, ASIRWAD, KIZHAKKUMBHAGOM, ETTUMANOOR, KOTTAYAM DISTRICT.

6. SMT.SUJA ALEX, KOCHUPARAMBIL, VETTIMUKAL P.O., ETTUMANOOR, KOTTAYAM DISTRICT.

7. SMT.BINDHU ROY, KOORKAMKALA, VETTIMUKAL P.O., ETTUMANOOR, KOTTAYAM DISTRICT.

8. SMT.SULOCHANA GEORGE,
KIZHAKKEPUTHENPARAMBIL,
VETTIMUKAL PO., ETTUMANOOR,
KOTTAYAM DISTRICT.

R1 TO R4 BY SR.GOVT.PLEADER SMT.ANU SIVARAMAN.
R5 TO R8 BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.35581 of 2007-J

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Dated this the 10th day of December, 2007.

JUDGMENT

1.The petitioner is a licensee of Toddy Shop No.47 in Ettumanoor Excise Range. The shop is licensed to function at Ward No.V of Vettimukal Panchayat. Going by the impugned Ext.P3, the Assistant Excise Commissioner has made a report to the Deputy Commissioner who, in turn, has placed a report to the Commissioner of Excise and those reports relate to the presence of a private temple with an Ayyappa Idol, a harijan colony and other factors, including the allegation that the petitioner did not commence vending of toddy within one month of the issuance of the licence. Going by Ext.P3, the Sub Inspector of Police had reported on 16-11-2007 that the shop started

functioning on 15-11-2007 and the ladies in the locality conducted a 'dharna' in front of the shop for 90 days. Obviously, therefore, the 'dharna' was before the opening of the shop. Ext.P4, which is not in dispute, is the copy of a report made by the Sub Inspector of Police to the District Collector on 16-11-2007 stating that there is no law and order situation. The materials on record would, obviously, show that the main thrust of the reasoning of the District Magistrate in Ext.P3 is dependent on materials other than peace and tranquility in the area and matters not directly referable to Section 54 of the Kerala Abkari Act. I say this in the context of the fact that the apparent stand of the police is that there is no law and order situation, though it is the assertion of the private respondents that they are objecting to the conduct of the toddy shop in the locality. May be that 'dharnas' are conducted, but none is entitled to take the law into his hands. The proper regulation of the police force of the

State and the fair application of the excise laws and the laws governing the preventive police action have, obviously, to ensure that private rights are not interfered with except in accordance with law and the conduct of the toddy shop has to be regulated in terms of the law, by the competent authorities.

2. Having regard to what is aforesaid, it is directed that the Excise Commissioner shall take up any report or statement made available to him as is stated in Ext.P3 and take a final decision on the question whether the petitioner is entitled to conduct the shop and still further, whether the shop is to be conducted in the site in relation to which the licence is granted, as of now. The questions whether the licence has been validly issued and whether the petitioner's shop has to be shifted, have also to be considered by the Excise Commissioner. For that purpose, Ext.P3 order cannot stand.

3.In the result, Ext.P3 is quashed and the parties are directed to appear before the Excise Commissioner on 14-12-2007 and place their respective cases in writing before him so that a final decision would be rendered by the Excise Commissioner within 10 days thereafter. It would also be permissible for the Excise Commissioner to have the appearance of the parties noted through such subordinate official as may be available in the Office of the Excise Commissioner and for the Excise Commissioner to schedule the hearing properly.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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